THE HONOURABLE SRI JUSTICE

B.SESHASAYANA REDDY

W.P.No. 17545 of 2005

ORDER:

1. This writ petition is filed by Shadan Educational Society and Shadan Institute of Medical Sciences with a prayer to declare the action of NTR University of Health Sciences-3rd respondent in treating the 2nd petitioner educational institution as a non-minority medical college for the academic year 2005-06 and the allotment of the students on such basis after 20-7-2005 on which date the 2nd petitioner institution was granted Muslim Minority Educational Institution as arbitrary, illegal and unconstitutional or in the alternative to declare the action of NTR University of Health Sciences-3rd respondent in refusing approval of the admission of 12 minority candidates to the 2nd petitioner institutions as arbitrary and illegal and consequently direct the NTR University of Health Sciences-3rd respondent to approve the list of the admissions submitted to it including the admissions to 12 Muslim Minority Students.

2. The 1st petitioner is a society registered under the provisions of A.P. (Telengana Area) Public Societies Registration Act, 1350 Fasli bearing registration No. 1283/85, dated 18-6-1985. The society has established institutions and imparting education in Schooling, Degree, M.B.A. M.C.A. Pharmacy and Engineering Courses, which have been certified as Muslim Minority Educational Institutions under relevant Rules. The 1st petitioner society made an application for grant of Essentiality Certificate for establishment of a Medical College as required under the Regulations framed under Indian Medical Council Act, 1956. The Government of Andhra Pradesh granted Essentiality Certificate for establishment of Medical College under proceeding dated 13-10-2003. The Union of India vide its letter dated 23-5-2005 granted approval for establishment of 2nd petitioner college with effect from the academic year 2005-06

with an intake of 150 seats. The Management of the college applied for affiliation to N.T.R.University of Health Sciences and the University granted affiliation on 10-6-2005. The NTR University of Health Sciences issued notification dated 16-6-2005 calling for application for MBBS and BDS Courses for the academic Year 2005-06. The applications were put on sale and the last date of application was fixed as 6-7-2005. The counseling was notified on 11-7-2005, informing the counseling dates from 17-7-2005 to 25-7-2005 and later counseling was extended upto 29-7-2005. The merit list and the seat matrix were notified in the University of Health sciences on the notice board. While so, the Government of Andhra Pradesh issued Memo No. 3393/M&R/A1/2005-1, dated 20-7-2005 according Muslim Religious Minority Status Certificate in favour of 2nd petitioner institutions for MBBS Course for the academic year 2005-06. By that time, counseling was commenced and the competent authority allotted candidates to the 2nd petitioner institutions under 'A' category and 'B' category. The total number of students allotted to the 2nd petitioner institution was 107. The candidates who have been provisionally admitted were to report before the respective colleges on or before 30st July, 2005. The 2nd petitioner institution admitted 100 candidates. It also issued notification on 21.7.2005 inviting applications for filling of seats under management quota for 1st year MBBS Course for the academic year 2005-06. It admitted 50 candidates under the management quota. According to the petitioners, out of 107 candidates only 100 students reported to 2nd petitioner institution and rest i.e 7 did not report. Thus, the 2nd petitioner institutions filled up 12 seats (5 unfilled and 7 consequential vacancies because of their not reporting) under management quota. Therefore, the petitioners submitted a list on 31-7-2005 mentioning the names of the candidates who have been granted admission in the category of management quota. The 3rd respondent University refused approval of admissions made by the 2nd petitioner college on the ground that the 2nd petitioner college has been treated as non-minority college and, therefore, any resultant vacancies under 'A' and 'B' category seats are to be filled up by the competent authority in the second round of counseling which is scheduled to be commenced place in the middle of September, 2005. The 3rd respondent University by letter dated 2-8-2005 directed the 2nd petitioner college to grant admission to two students who have been allotted in the first counseling, if they report on or before 4-8-2005. According to the petitioners, these two students are not

amongst 7 students who did not report to the college on 30-7-2005. The petitioners claim that as soon as the State Government issued memo declaring the 2nd petitioner institution as a Minority Institution, allotment of seats to the 2nd petitioner institution should be treating it as minority institution and in which case candidates admitted by the 2nd petitioner institution under management quota is less than that of its entitlement. The Rules governing admissions into non-minority colleges are comprised in G.O.Ms.No.184, dated 30-6-2004 as amended by G.O.Ms.No.435 dated 22-6-2005. As per the said Rules the total intake of the unaided non-minority colleges is divided into three categories as under :-

i. Category 'A' seats - 50% of the sanctioned intake of the seats

filled in by the competent authority

ii. Category 'B' seats - 25% of the sanctioned intake of the seats

to be filled in by the Committee for

admissions.

iii. Category 'C' seats - 25% of the sanctioned intake of the seats

to be filled in by the management

concerned.

As regards the Minority Institution unaided institutions, the Government had issued G.O.Ms.No.217 dated 23-7-2004 as amended by G.O.Ms.No.427, dated 13-7-2005 governing the method of admissions into these colleges. As per the said Government Orders, the admissions into unaided minority medical colleges are to be done as under: -

i. Category 'A; seats - 25% of the sanctioned intake of seats to

be filled in by the competent authority for

general students.

ii. Category 'B' seats - 25% of the sanctioned intake of seats to

be filled in by the competent authority

for minority candidates.

iii. Category'C' seats - 25% of the sanctioned intake of seats to

be filled in by the management with

students belonging to the minority

community concerned.

iv. Category 'D' seats - 25% of the sanctioned intake of seats to

be filled in by the management.

3. According to the petitioners, by reason of 3rd respondent University treating the 2nd petitioner institution as a non-minority college by the proceeding No. 2580/MBBS/BDS/EA-1/2005, dated 2-8-2005, the 2nd petitioner-institution has been deprived of a right to cater to the requirement of Muslim Minority Community students. It is the specific assertion of the petitioners that out of 107 candidates allotted in the counseling under 'A', and 'B' categories to the 2nd petitioner institution, only 100 reported and therefore, there were 12 clear vacant seats which have been adjusted with the Muslim Minority Community Students already admitted by the college in pursuance of the paper notification dated 21-7-2005. I deem it appropriate to refer the para 13 of the writ affidavit to have a better understanding of the grievance of the petitioners and it is thus:

> *"I respectfully submit that the petitioners' decision to admit the students as allotted by the 3rd respondent treating it to be a non-minority institution cannot be treated as an estoppel against the petitioners; right to make admissions in accordance with the G.O.Ms.No.217, dated 23-7-2005 as amended vide G.O.Ms.No.427 dated 13-7-2005. On advice, it is submitted that it is a settled position in law that there cannot be an estoppel against the enforcement of constitutional right under Article 30(1) of the Constitution of India nor could there be a forcible waiver of such right. The present situation obtaining as on today is that the admissions made by the petitioners in respect of 12 seats in the vacancies that remained after the counseling in the A & B categories have been refused approval by the 3rd respondent vide impugned proceedings No. 2580/MBBSBDS/EA-1/2005, dated 2-8-2005. This has resulted in a situation wherein the muslim minority*

students admitted by the Management under intimation to the 3rd respondent, would not be permitted to prosecute the course while the students who have been allotted and who have not even reported on time are directed to be admitted in the college. In the circumstances, the present Writ Petition is filed seeking a declaration that the action of the 3rd respondent in treating the 2nd petitioner as a non-minority institution vide impugned proceedings dated 21-7-2005 as unconstitutional, arbitrary and illegal and or in the alternate to declare the action of the 3rd respondent in refusing the approval of admission to 12 minority candidates admitted by the Petitioners as intimated to the 3rd respondent in the list communicated on 2-8-2005, as well as the insistence of the 3rd respondent to admit the students even after the cut-off dated 30-7-2005, as arbitrary and illegal".

4. The 3rd respondent University filed counter affidavit. One P.Jayakar Babu, the Registrar of the 3rd respondent-University has sworn to the counter affidavit. It is stated in the counter affidavit that Medical Council of India issued Circular letter No. MC1-23(1) 2004-Med/498, dated 8-4-2005 instructing all the concerned authorities including the Universities keeping in view the directions of Hon'ble Supreme Court in MCI Vs. Madhu Singh and others to follow the schedule fixed by them, i.e. admissions including counseling there of be completed by the competent authorities and agencies on or before 31st July of the concerned year for 1st year MBBS Course and the academic session to be commenced in all the teaching institutions on 1st August of the concerned year. Accordingly, the University has issued notification calling for applications from the eligible candidates for admission into first year MBBS/BDS Courses for the year 2005-06. The University has also notified the schedule of counseling for admission into MBBS/BDS Courses for the academic year 2005-06 commencing from 17th July, 2005. While the counseling was going on, the management of the 2nd petitioner college approached the University and requested to treat their medical college as Muslim Minority Institution. The University could not implement the Muslim Religious Minority Status Certificate issued to the 2nd petitioner-institution for the year 2005-06, since the seat matrix allocating seats as per the constitutional reservations and other reservation as prescribed by the Government of Andhra Pradesh has been fixed and counseling has already been

commenced on 17th July, 2005. The Vice Chairman of Shadan Educational Society, Hyderabad met the Vice Chancellor in his chambers at Vijayawada on 30-7-2005 and agreed to abide by the rules of the University and also agreed to admit all the students allotted by the University unconditionally. Under letter dated 2-8-2005, the 2nd petitioner college was informed that as per the Rules and Regulation any vacancy under 'A' category and 'B' category in private colleges will be filled up by the competent authority in the second round of counseling and as such the 2nd petitioner-institution cannot make admissions in respect of seats to be filled by the competent authority on the pretext that seven candidates are not reported to the college on the date fixed by the University. The said seven candidates have got provisionally selected in the 2nd petitioner college and they have handed over the original certificates and paid fee as such their admission was already completed within the time schedule and when they actually reported at the college within the date, the college authorities have not admitted them, as complained by the said candidates. In view of the above, the 12 admissions made by the management under the seats to be filled by the competent authority cannot be considered for approval. The State Government framed statutory Rules viz. A.P.Unaided Professional Institutions (Regulation of Admission into Under-graduate Medical and Dental Professional Courses) Rules, 2004, which are published in G.O.Ms.No.184 H.M.8F.W.(E-1) Department, dated 30-6-2004. the said rules are applicable to the 2nd petitioner institution. As per Rule 5 of the said Rules, the competent authority can allot 112 seats under category-A(75) and under category-B (37). During the first round of counseling only 107 seats are filled and 5 vacancies are available under the physically handicapped and other reserved categories. It is further stated that it is impracticable for the University to annul the statewide admissions undertaken by the University during the counseling held between 17-7-2005 to 29-7-2005.

5. A reply affidavit has also been filed by the petitioners. It is stated in the reply affidavit that out of 107 candidates allotted under 'A' and 'B' category, only 100 candidates reported to the 2nd petitioner-college and whereas 7 did not report. I deem it appropriate to refer para 6 of the reply affidavit and it is thus:

"*I respectfully submit that the contention of the 3rd respondent*

in paragraph 5 of the counter affidavit, that though 7 students reported on time, the college refused to admit them is factually incorrect and unsubstantiated. On the contrary, 4 of the 7 students who reported on 1.8.2005 had in fact admitted to their having reported on 1-8—2005, in writing which was forwarded to the University by the 2nd petitioner college while the remaining three did not even report on 1st August, 2005. The interpretation placed on the cut-off date being 30.7.2005 as fixed by the Medical Council of India and the power of the University to issue the impugned direction to admit two students who reported beyond cut off date is wholly misconceived. The final cut off date for admission being 30.9.2005 is only in respect of unfilled seats and it cannot be utilized for extending the last date for students who have reported beyond the cut-off date. The University while pleading for the inviolability of the M.C.I. guidelines in regard to time schedule in the earlier paragraphs seeks to extend the cut-off date without any legal authority in respect of two students who did not honour the time fixed in the provisional admission order. Further, it is submitted that the 2nd respondent has granted the minority status to the 2nd petitioner college only after our compliance with all the guidelines and rules in this regard and there are no warranting circumstances to cancel such certificate as sought by the 3rd respondent. The situation as of now is brought about by the continued arbitrary actions of the 3rd respondent in not recognizing the 3rd petitioner as a minority medical college".

6. Heard Mr.D.Prakash Reddy, the learned senior counsel appearing for the petitioners, Mr.D.V.Nagarjuna Babu, learned Standing Counsel appearing for the 3rd respondent and the learned Government Pleader for Medical, Health and Family Welfare appearing for the Respondents No. 1 and 2.

7. Though the petitioners sought for a larger relief in the writ petition, much emphasis has been laid on the relief, during the course of arguments, to the extent of seeking direction to the 3rd respondent University to recognize the 12 candidates admitted by 2nd petitioner-college over and above 'C' category seats. In nutshell, the 2nd petitioner college admitted 50 students under 'C' category. If the 2nd petitioner is

treated as non-minority institution, the total number of seats under the management quota i.e. under 'C' category is 38. But, the 2nd petitioner college admitted 50 students i.e. 12 students over and above under 'C' category.

8. The issue involved in the writ petition can be narrowed down and it is:-

> Whether the petitioners are entitled to seek direction to the 3rd respondent University to recognize the 12 students admitted by them under the management quota?

9. Wide ranging submissions as to the nature, scope, width, ambit and content of the fundamental rights guaranteed under Art.30(1) of the Constitution of India are made by the learned senior counsel appearing for the petitioners. We have travelled more than half a century from the date of commencement of the Constitution and there is no doubt with regard to right of minorities to establish and manage educational institutions. It is well settled that the right under Art.30(1) is subject to regulatory jurisdiction of State. The Supreme Court in ST.STEPHEN'S COLLEGE V. THE UNIVERSITY OF DELHI observed "that there must exist some positive index to enable the educational institution to be identified with religious or linguistic, minorities. Art.30(1) is a protective measure only for the benefit of religious and linguistic minorities and it is essential to make it absolutely clear that no ill-fit or camouflaged institution should get away with the constitutional protection. A Full Bench of this court in SOCIETY OF ST.ANN'S v. SECRETARY TO GOVERNMENT (EDUCATION) observed that a minority community is equally bound by the provisions of the Education Act, 1982 and the rules made there under which regulate the establishment and administration of educational institutions and they are also bound by the policy decisions, if any, taken by the State Government. No education institution, for whatever purpose, may be considered as minority educational institution unless a certificate is issued according recognition in Form 11. There is no other mode or method for recognizing educational institutions as a minority institution.

10. The learned Senior Counsel appearing for the petitioners submits that under memo dated 20-7-2005 the right of the 2nd petitioner has been recognized and the date of recognition relates back to the date of its establishment. In support of his submission, reliance has been placed on the decisions of Supreme Court in ***N.Ammad Vs. Manager, Emjay High School,*** where in it has been held'

> *"when the Government declared the School as Minority School it has recognized the factual position that the school was established and is being administered by a minority community . The declaration is only an open acceptance of a legal character which should necessarily have existed antecedent to such declaration."*

11. The learned counsel appearing for the 3rd respondent University submits that by the date of the issuance of the notification calling for the applications from the qualified candidates in EAMCET for admissions to MBBS/BDS Courses, the 2nd petitioner college was not a minority institution and therefore, the seat matrix was fixed following the Rules of Reservation treating the 2nd petitioner-college as non-minority institution. He further submits that even on the date of first round of counseling, the 2nd petitioner institution did not have minority status and it was only when the counseling was under progress, the 2nd petitioner-college secured minority status and therefore, the minority status could not be given effect for the academic year 2005-06. He also submits that the seven candidates provisionally admitted in the counseling reported to the 2nd petitioner-college, but the 2nd petitioner-college refused to admit them. This fact has been contraverted by the counsel appearing petitioners stating that the seven candidates did not report before the college and therefore, the question of not admitting them does not arise and more particularly when 100 candidates allotted to the petitioners college have been given admission. This is a disputed question of act which cannot be resolved in the writ petition and indeed the same is not required to be resolved for proper adjudication of the issue involved in the writ petition. Ultimately, the dispute is only with regard to 12 seats. The petitioners claim that had the 2nd petitioner-college been treated as minority institution at least from 20th July, 2001, its share in the total intake of 150 students would be much more than 50 seats, which they had filled up under management quota. At this juncture, I deem it appropriate to refer Andhra

Pradesh Unaided Non-Minority Professional Institution (Regulations of Admissions into Under Graduate Medical and Dental Professional Courses) Rules, 2004 (hereinafter referred to as Rules, 2004). These Rules are framed by the Andhra Pradesh State Government in exercise of power conferred by Section3 and 15 of the Andhra Pradesh Educational Institutions (Regulation of Admissions) and Prohibition of Capitation Fee, 1983 (Act 5 of 1983). The procedure for admission has been dealt under Rule 5 of Rules, 2004. 50% of sanctioned intake of seats more precisely called 'A' category seats shall be filled up by the competent authority. 25% of the sanctioned intake of seats more precisely called 'B' category seats shall be filled up by the Committee appointed by the authority. 25% of the sanctioned intake seats more precisely called 'C' category seats shall be filled up by the individual college management/ committee of the management in the order of merit in a transparent manner. The 2nd petitioner college issued notification on 21-7-2005 inviting application to fill up seats under management quota. The notification does not indicate the total number of seats available under management quota. If the 2nd petitioner-college is treated as non-minority institution, the management quota i.e. 'C' category comes to 38 seats only. It is the contention of the 2nd petitioner-college that out of 107 candidates allotted to it by the competent authority, 7 did not report and 5 seats remained unfilled in the first counseling and therefore, the management has taken those 12 seats also into consideration and admitted the candidates accordingly. Therefore, what is required to be seen is whether the management is competent to fill up 12 seats. I make myself very clear that since the 2nd petitioner college did not possess the minority status as on the date of the counseling, the arrangement of total intake of the seats is as follows:

'A' category 50% = 75 seats

'B' category 25% = 37 seats

'C' Category 25% = 38 seats

Total: 150 seats

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12. The 2nd petitioner secured minority status while the first round of counseling was

in half way. It is in the specific case of the 3rd respondent-University that seats matrix was arranged by the date of commencement of first counseling by following the Rule of Reservation. 12 seats in question which remained vacant in the first round of counseling under 'A' category and 'B' category in the 2nd petitioner-college as per ENDT/EA1/2005, Dated 4.9.2005 are detailed hereunder:

OC 'B' 'B' Category 2 (PH-1)

BC -B 'A' Category 1

'B' Category 1 (PH)

BC-D 'A' Category 3

'B' Category 1

BC-E 'A' Category 1

SC 'B' Category 1 (PH)

ST 'A' Category 1 (PH)

Sports
& Games 'A' Category 1

13. To put it aptly, seven seats under 'A' category and five seats under 'B' category remained unfilled in the first phase of the counseling. It is no more in dispute that it is the competent authority/ committee which is to fill up these seats. The question is as to how the resultant vacancies are to be filled in respect of category 'A' and Category 'B' seats. Under Rule 5(A)(V)(xii) of Rules, 2004, resultant vacancies in A category shall be open to all the candidates below the rank of candidates who have not joined the course and the candidates who were absent in the earlier selection. The resultant vacancies shall be filled up by the candidates belonging to the same category of seats as those who have not joined the course or vacated the seat. Under Rule 5(B)(ix)(h) of the Rules, 2004, if a candidate after final selection fails to report to the Principal of the respective college, on or before stipulated time and /or if the committee of non-minority management fails to fill up the seats under category

'B', the unfilled seats shall be treated as vacant and the vacant seats shall be filled up by the competent authority by following EAMCET merit ranking and the rules of reservation as applicable. Therefore, it is clear from the rules that in case of resultant vacancies in 'A' and 'B' categories, it is the competent authority/committee of admissions who is empowered to select candidates in the counseling and not the management of the respective colleges. It is also required to be noted that the University has taken into consideration total number of seats under 'A' category and 'B' category in all colleges and prepared seat matrix separately for each region by following Rule of reservation and that is the reason for bringing the resultant vacancies under 'A' and 'B' category within the purview of competent authority. Even the 2nd petitioner college issued notification dated 21-7-2005 for filling up 'C, category seats only. Of course, that is not specifically stated in the notification, but that can be inferred from the material placed on record more particularly the letter dated 31-7-2005 addressed to the Registrar, NTR University of Health Sciences, Vijayawada. The letter reads as follows:-

> "*Sir,*
>
> *Sub: Submission of the list of Candidate admitted into Ist year M>B>B>S. Course for the academic year 2005-06 in Shadan Institute of Medical Sciences under management quota and the candidates allotted by the Convener of NTRHS under A & B categories.*
>
> *Ref: Yourletter No. 2580/ MBBS/ BDS/ EA1/ PVT/ NRI, Reg./Fee/2005, dated 28-7-2005.*
>
> *With reference to the above I am herewith submitting the list of candidates selected by the Management under category 'C'. As we have received the above letterin the afternoon of 30th July, 2005, I am sending the original certificates along with the Performas duly filled in of the candidates under category 'C;. I am also submitting a list of candidates admitted into 1st MBBS course for the year 2005-06 allotted by convener NTRHS under A & B categories who have reported by 30th July,2005.*
>
> *The number of total candidates admitted into our Institute under various categories including management quota is 150 (one hundred and fifty). Kindly acknowledge the above list.*
>
> *The classes for 1st year MBBS for the academic year 2005-06 will commence from 1-8-2005 as per your instructions and college timings will be from 9-00 a.m. to 4-00 p.m. and six days*

in a week.

With regards.

Dean

Shadan Institute of Medical Sciences".

14. It is crystal clear from the letter stated supra that the 2nd petitioner institution proceeded with the admission under its management quota as non-minority institution. Had the admissions of candidates in the 2nd petitioner-college are proceeded claiming to be a minority institution, the admissions should have been under 'C' and 'D' category. Therefore, I am nodoubt to conclude that even the 2nd petitioner-college proceeded with the admissions of candidates under management quota i.e. under 'C' category only assuming it as a non-minority institution. In which case, the seats which come within the purview of the management are 38 only. 'A' category seats come to 75 and 'B' category seats come to 37. A category and B category seats put together come to 112. Only 100 candidates have taken admission in the 2nd petitioner-college under A category and B category. Therefore, there are 12 more resultant vacancies in the above two categories. The question is who is competent to fill up those resultant vacancies. The answer could be found in 2004 Rules, wherein it is stated that the resultant vacancies under Category 'A' and 'B' seats come within the purview of the Competent Authority/committee of admissions. Therefore, the relief claimed by the writ petitioners is in contravention of Rules, 2004. Thus, no direction can be given to the 3rd respondent-University to recognize the 12 candidates who have been admitted by the 2nd petitioner college over and above its quota.

15. Accordingly, the writ petition fails and is dismissed. No order as to costs.

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B.Seshasayana Reddy, J.

12th September, 2005.

CC in two days.

B/o

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